

E-filed 8/28/08

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,

Case No. C-06-6142-JF/PVT

Plaintiff,

PATRICIA HUIZACHE.

**[PROPOSED]
CONSENT DECREE**

Plaintiff-Intervenor,

VS

SIZZLER USA RESTAURANTS, INC.

Defendant.

I. INTRODUCTION

Plaintiff Equal Employment Opportunity Commission ("EEOC") filed this action pursuant to Title VII of the Civil Rights Act of 1964 ("Title VII"), and Title I of the Civil Rights Act of 1991. The EEOC alleges that Defendant Sizzler USA Restaurants, Inc. (Sizzler) subjected Charging Party Patricia Huizache to a hostile environment based on her sex and/or national origin which culminated in her constructive discharge. Ms. Huizache intervened into the lawsuit and included parallel state claims.

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1 **II. NON-ADMISSION OF LIABILITY**

2 This Consent Decree is not an adjudication or finding on the merits of this case and shall
 3 not be construed as an admission of a violation of Title VII or any other statute by Defendant
 4 Sizzler.

5 The Court has reviewed the terms of this Consent Decree in light of the pleadings, the
 6 record herein, and the applicable law, and now approves the Consent Decree in its entirety.

7 Therefore, **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** as follows:

8 **III. GENERAL PROVISIONS**

- 9 1. This Court has jurisdiction over the subject matter and the parties to this action.
- 10 2. This Consent Decree constitutes a full resolution of the EEOC's and Patricia
 11 Huizache's complaints in EEOC/Huizache v. Sizzler USA Restaurants Inc., Civil Action C-06-
 12 06142 JF.
- 13 3. This Consent Decree shall become effective upon-its entry by the Court.
- 14 4. This Consent Decree is final and binding upon the Parties, their successors and
 15 assigns.
- 16 5. The Parties shall bear their own costs and attorney fees.

17 **IV. GENERAL INJUNCTIVE RELIEF**

18 **1. Sexual and National Origin Based Harassment**

19 Defendant, its officers, agents, management (including all supervisory employees),
 20 successors and assigns, and all those in active concert or participation with them, or any of them,
 21 are enjoined from, or from being a party to, any action, policy or practice that is intended to or is
 22 known to them to have the effect of harassing or intimidating any employee on the basis of sex
 23 and/or national origin, or which creates, facilitates or permits the existence of discrimination on
 24 the basis of sex and/or national origin.

25 **2. Retaliation**

26 Defendant, its officers, agents, management (including supervisory employees), successors
 27 or assigns, and all those in active concert or participation with them, or any of them, are enjoined
 28 from engaging in, implementing or permitting any action, policy or practice with the purpose of

1 retaliating against any current or former employee of Defendant because he or she complained
 2 about sexual harassment, filed a charge of discrimination alleging any such practice, testified or
 3 participated in any manner in any investigation (including, without limitation, any internal
 4 investigation undertaken by Defendant), proceeding or hearing in connection with this case, and/or
 5 relating to any claim of sexual or national origin harassment, or was identified as a possible
 6 witness in this action.

7 **V. SPECIFIC INJUNCTIVE RELIEF**

8 In order to effectuate the objectives embodied in this Consent Decree, Defendant shall
 9 make the following modifications to its existing policies, procedures, and practices at the
 10 Redwood City restaurant where Ms. Huizache was formerly employed.

11 **1. Policy Changes**

12 Within sixty (60) days after entry of this Consent Decree, Defendant shall, to the extent it
 13 has not already done so, revise its personnel policies applicable to the Redwood City restaurant to
 14 include the following:

15 (i) A provision which requires Defendant to provide translation services to any
 16 employee who has limited fluency in English for the purpose of reading and understanding
 17 Defendant's antidiscrimination and complaint policy and procedures. As an alternative, Defendant
 18 may provide copies of the subject policies/procedures in the employee's primary language.

19 (ii) A provision which designates two managers at the Redwood City restaurant as
 20 contact persons with responsibility for responding to and/or turning complaints over to those
 21 Sizzler employees or third parties designated as complaint investigators. This provision shall also
 22 designate complaint contacts within the appropriate district manager's office. and with the
 23 corporate human resources office. The names of all contact persons, their work locations and
 24 telephone numbers shall be listed in the policy, and also shall be routinely and continuously posted
 25 in a prominent place at the Redwood City restaurant. The corporate contact phone number shall
 26 include a toll-free number or indicate that collect calls will be accepted. This provision should also
 27 state that there is no requirement that an employee complain to the contacts at their work location
 28 prior to making a complaint to either the district manager or the corporate human resources office.

(iii) A provision allowing an employee to make an anonymous complaint of discrimination but explaining the limitations that may be encountered in investigating and taking corrective action in response to such a complaint.

4 (iv) A provision ensuring employees that complaints of discrimination need not be
5 made in writing.

(v) A provision requiring that witnesses in an investigation be assured that they will not be retaliated against and that any statement made by that person will be kept in strict confidence to the extent that is feasible and consistent with the objectives of the investigation.

9 (vi) A provision requiring the documentation of a complaint of discrimination by the
10 person responsible for receiving the complaint and/or the complaint investigator. The
11 documentation must include a detailed explanation of the complaint, including the date and time
12 received, describe the action taken to investigate the complaint, include summaries of witness
13 statements, and provide the findings and any action taken in response to the complaint.

14 (vii) A provision that advises that managers and supervisors who become aware of
15 discrimination by their subordinates but do not take immediate action to prevent or correct the
16 situation will be subjected to disciplinary action up to and including termination.

17 (viii) A provision which advises employees that they may file complaints of
18 discrimination with the federal Equal Employment Opportunity Commission; employees can learn
19 more by calling 1-800-669-4000, by emailing the EEOC at info@ask.eeoc.gov or by visiting the
20 EEOC's website at www.eeoc.gov. The provision should also indicate that the EEOC's services are
21 free.

22 (ix) A provision which requires the company to record within an employee's personnel
23 file any disciplinary action based on conduct found to be discriminatory following an investigation
24 of the sort called for herein.

2. Policy Dissemination:

26 (i) Beginning within ninety (90) days of the entry of this decree, the company policies
27 and procedures, as revised above, shall be hand-delivered to each and every employee of
28 Defendant's Redwood City restaurant.

(ii) The revised policies and procedures shall also be posted on all company bulletin boards at the Redwood City restaurant for the duration of this Consent Decree.

3. Supervisor Accountability Policy

(i) Defendant is ordered to impose substantial discipline - up to and including termination, suspension without pay or demotion - upon any supervisor or manager at the Redwood City restaurant who is found, after an appropriate investigation, to have engaged in sexual and/or national origin discrimination, permitted such conduct to occur in his or her work area or among employees under his or her supervision, and/or prevented or otherwise impedes the investigation or reporting of such discrimination or harassment.

(ii) Supervisors and managers shall also be accountable for promptly responding to complaints of sexual and/or national origin harassment and to forward complaints to the individuals charged with handling them.

(iii) Defendant is ordered to revise its supervisor appraisal process, as necessary, to ensure that appropriate communication of anti-discrimination policies and appropriate handling of sexual harassment complaints are included as elements of the appraisals.

(iv) Defendant is ordered to advise all current and new managers and supervisors at the Redwood City restaurant of their duties under these revised policies.

4. Training Program

Defendant is ordered to present to all of its current and new employees at the Redwood City restaurant, including management employees, at least two hours of mandatory equal employment opportunity training, once every two years for the duration of this Consent Decree. The first training shall be for those employees and new hires at the Redwood City restaurant who have not previously received equal employment opportunity/harassment training within the last twelve months and shall be conducted within a reasonable period mutually agreed upon by the parties, but no later than ninety (90) days after the entry of this Consent Decree. The cost of the training shall be borne by Defendant.

The training described in the preceding paragraph shall be in-person training, accompanied by materials prepared by experienced educators and/or investigators, and shall educate the

1 employees about the problems of discrimination-in the workplace. The purpose of the training
 2 will be to give participants a thorough understanding of discrimination and harassment issues,
 3 including policies (including discipline policies) and practices related to discrimination,
 4 harassment and retaliation. The training will further inform each participant that he or she is
 5 responsible for knowing and complying with the contents of Defendant's equal employment
 6 opportunity policy.

7 Managers and Supervisors shall receive an additional two hours of training once every two years,
 8 as required under California law, for the duration of this Consent Decree on the employer's
 9 responsibility to provide a workplace free of sexual harassment and retaliation, appropriate
 10 techniques for investigating discrimination and harassment, and remedying it.

11 Defendant shall provide to the EEOC thirty (30) days in advance of the each training a
 12 copy of the course syllabus for the training.

13 All persons attending each mandatory equal employment opportunity training shall sign an
 14 acknowledgment of his or her attendance at the training, the date thereof, and his or her position
 15 with the company. All participants shall also be given a questionnaire through which they will be
 16 asked to critique the training and to provide suggestions to improve future training sessions.

17 Defendant shall provide a copy of these attendance records, the completed post-training
 18 questionnaires, and the training materials to the Commission within thirty (30) days of completion
 19 of the trainings.

20 **5. Posting and other Notices to Employees**

21 Defendant is ordered to conspicuously post notices, a copy of which is attached as Exhibit
 22 1, in clearly visible locations where such notices generally addressing employee issues are
 23 normally and customarily posted. Such notices shall be posted for the duration of the Consent
 24 Decree. Defendant shall monitor the notices and replace within ten (10 days) any notice which is
 25 defaced or removed.

26 Within ninety (90) days of the entry of this Consent Decree, Defendant shall issue to all
 27 employees, supervisors and managers, the revised policies required under this section entitled
 28 Specific Injunctive Relief. Each employee shall be asked to sign an acknowledgment that he or

1 she has received and read the policy. The same acknowledgment shall be required of all newly
 2 hired employees, including all managers and supervisors, at the start of their employment.

3 **VI. MONETARY RELIEF**

4 1. Defendant is ordered to pay to Charging Party Patricia Huizache the amount of
 5 \$300,000.00

6 2. The amount above is to be paid in complete compromise of all disputed issues
 7 arising out of the Complaints filed in this lawsuit EEOC/Huizache v. Sizzler USA Restaurants,
 8 Inc., Civil Action No. 06-06142 JF in the United States District Court for the Northern District of
 9 California - San Jose.

10 3. The monetary relief shall be paid within fifteen (15) days of the entry of this
 11 Consent Decree in the form of a check payable to "Patricia Huizache and her attorney Matthew T.
 12 Newman." The check shall be delivered by verifiable method to Matthew T. Newman, Matthew
 13 T. Newman and Associates, 1735 N. First Street, Suite 290, San Jose, California 95112. A
 14 photocopy of the check shall be provided to EEOC counsel.

15 **VII. REPORTING**

16 1. One year after entry of the Decree and every year thereafter for five years,
 17 Defendant shall submit reports to the EEOC summarizing any complaints of discrimination from
 18 the Redwood City restaurant received by Defendant during the preceding year. The reports will
 19 include the identities of the complainant(s) and the alleged harasser(s), if any, and a summary of
 20 action taken in response to the request or complaint.

21 2. Within ninety (90) days of the entry of this Consent Decree, Defendant shall send
 22 to the EEOC a copy of the company's revised policies and procedures in accordance with Section
 23 V, above.

24 3. Within thirty (30) days after completion of the biannual employee and supervisory
 25 trainings described in Section V(C) above, Defendant shall send the EEOC appropriate
 26 verification of its completion of training, and shall provide a copy of the records indicated in
 27 Section V(C)(5).

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1 4. Defendant shall submit a certification to the EEOC sixty (60) days prior to the
 2 expiration of this Consent Decree containing a statement verifying the company's compliance with
 3 the terms of the Consent Decree.

4 **VIII. RETENTION OF JURISDICTION AND EXPIRATION OF CONSENT DECREE**

5 1. The duration of this Consent Decree shall be five (5) years from the date of entry of
 6 the Decree, provided that Defendant has complied substantially with the terms of this Consent
 7 Decree. Defendant shall be deemed to have complied substantially if the Court has not made any
 8 finding or orders during the term of the Consent Decree that the Defendant has failed to comply
 9 with any terms of this Consent Decree.

10 2. The EEOC shall be entitled to its reasonable costs and attorneys' fees in connection
 11 with any civil action to enforce compliance with the terms and conditions of this Consent Decree.

12 3. This Court shall retain jurisdiction over this matter and the Parties for the purpose
 13 of enforcing compliance with the Consent Decree, including issuing such orders as may be
 14 required to effectuate its purposes.

15 4. If any provision of this Consent Decree is found to be unenforceable by a court of
 16 competent jurisdiction, only the specific provision in question shall be affected and the other
 17 enforceable provisions shall remain in full force and effect.

18 5. Any documents or information required to be submitted by Defendant to the EEOC
 19 under the terms of this Consent Decree shall be sent to Linda Ordonio-Dixon, EEOC, 350 The
 20 Embarcadero Street, Suite 500, San Francisco, California 94102.

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 22 **IT IS SO ORDERED.**

23 8/28/08

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 25 **UNITED STATES DISTRICT COURT JUDGE**
 26 JEREMY FOGEL

NOTICE TO ALL EMPLOYEES

This notice is being posted pursuant to a Consent Decree issued by the Federal Court in a lawsuit brought against Sizzler USA Restaurants, Inc. by the Equal Employment Opportunity Commission and Patricia Huizache. [Civil Action 06-06142 JF, United States District Court of California - San Jose.]

Under the Consent Decree, Sizzler USA Restaurants, Inc. is ordered not to discriminate against any employee by subjecting employees to a discriminatory work environment or retaliation for complaining about discrimination in the workplace.

Should you have any complaints of discrimination, you can follow the complaint procedures established by the company, or you can contact the Equal Employment Opportunity Commission (EEOC). The EEOC is the federal agency that enforces federal anti-discrimination in employment laws. The EEOC charges no fees for its services, and has employees that speak languages other than English, including Spanish.

EEOC Contact Information:

EEOC San Francisco District Office
350 The Embarcadero Street, Suite 500 San Francisco, CA 94105
Telephone (800) 669-400
Fax (415) 625-5609
TDD: (515) 625-5610
Email: info@ask.eeoc.gov
Website: www.eeoc.gov

**THIS POSTING IS AN OFFICIAL NOTICE AND BY ORDER OF THE COURT MUST
NOT BE DEFACED OR OBSCURED.**

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT JUDGE